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In the Supreme Court of the United States

OCTOBER TERM, 1967

No. 320

VINCENT SERMAN AND LENINE STROLLO, PETITIONERS

v.

UNITED STATES OF AMERICA

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE SIXTH CIRCUIT

BRIEF FOR THE UNITED STATES IN OPPOSITION

OPINION BELOW

The opinion of the court of appeals (Pet. App. 32) is not reported.

JURISDICTION

The judgment of the court of appeals was entered on April 21, 1967. A petition for rehearing was denied on June 1, 1967. The petition for a writ of certiorari was filed on July 1, 1967. The jurisdiction of this Court is invoked under 28 U.S.C. 1254(1).

QUESTIONS PRESENTED

1. Whether the district court abused its discretion in denying petitioners' motions for new trial based on the ground of newly discovered evidence.

274-987—67——1

2. Whether the court of appeals erred in denying petitioners' motions concerning wiretapping and electronic eavesdropping.

STATEMENT

On July 23, 1963, in the United States District Court for the Northern District of Ohio, petitioners were convicted of passing counterfeit notes and conspiring to do so (R. 6a–7a, 12a–15a).[1] On July 31, 1963, petitioner Serman was sentenced to imprisonment for a total period of thirteen years and petitioner Strollo to imprisonment for a total of nine years with five years' probation to follow (R. 7a).[2] The court of appeals affirmed the convictions and this Court denied petitions for writs of certiorari (381 U.S. 912).

On October 15, 1965, four days after this Court's denial of petitions [illegible] rehearing (382 U.S. 873), petitioner Serman file[illegible] ground of newly [illegible] and on October 28, [illegible] lar motion (R. 31[illegible] district court den[illegible] (R. 57a). The cou[illegible] 32).

1. Since the alle[illegible] must be evaluated [illegible] summarize the rev[illegible]

[illegible]ations in the motion for a new trial [illegible]gainst the evidence at the trial, we [illegible]ant trial testimony.

[illegible]printed appendix filed by petitioners in [illegible]Tr." refers to the transcript of the pro[illegible]al, a copy of which is being lodged with

[illegible] Strollo received probation, is not here in

[1] "R." refers to the [illegible] the court of appeals. [illegible] ceedings at the 1963 t[illegible] the Clerk of this Cou[illegible]

[2] Count 5, on whic[illegible] issue (see Pet. p. 2).

John Paladinich testified that in the fall of 1962, petitioner Serman, a childhood friend who had become an attorney, spoke with him on several occasions about passing counterfeit money which Serman expected to obtain (Tr. 2–6). On January 3, 1963, at the home of petitioner Strollo, he, Strollo and Serman counted through several packages of counterfeit $10 Federal Reserve Notes and talked about the method to be used in passing them (Tr. 7–11). Strollo then showed Paladinich a desk containing additional stacks of bills in three different serial numbers (Tr. 11–12). It was agreed that Paladinich would enlist his brother, Joseph, to aid in passing the notes, and that the first $7,500 obtained in genuine currency would be given to Serman to pay off the printer (Tr. 12–13, 98). Serman then handed Paladinich $1,000 in counterfeit

[illegible] given about $80 in genuine currency, together with the items they had purchased (Tr. 22, 160).[1] Thereafter the brothers drove to Warren, Ohio, where each continued to pass counterfeit notes until Joseph was apprehended in a department store (Tr. 23–24, 161–163; see Tr. 273–274).

[1] The items were later found by Secret Service agents in the basement of Strollo's home (Tr. 61–63, 65–69, 71–73, 171–172, 246, 251–257).

Joseph Paladinich testified that the following morning, when petitioner Serman came to the Warren city jail to arrange for his release on bail, Serman told him not to tell the law enforcement officers anything which might jeopardize the others (Tr. 163–164, 199–201). However, when interviewed by Secret Service agents, Joseph voluntarily disclosed what he knew concerning the counterfeiting activities and agreed to keep Agent Dixon informed of future developments (Tr. 161, 211).

John and Joseph Paladinich testified that on January 25, 1963, they arranged a meeting with Serman at a public area in a local store, and inquired about resuming the passing of counterfeit notes (Tr. 37). Serman stated it would be too risky to have Joseph pass again, but indicated that John Paladinich

50, 53–54). At one store Armstrong, who feared he had been discovered, ran from the store, abandoning some of the remaining counterfeit notes in a nearby washroom. When Armstrong and Paladinich returned to Youngstown, Strollo and Serman advised them to say nothing as Treasury agents had been following them (Tr. 55, 59–60, 74; see Tr. 239–240). The notes abandoned by Armstrong were later recovered by federal agents (Tr. 243–244). Various agents testified to surveillances which confirmed the activities of petitioners on the night of January 31 (Tr. 230–236, 291–294, 306–311, 408, 410–411).

2. In their motions for new trials, to which supporting affidavits were appended, petitioners asserted that they had recently learned through Mildred Socie, an acquaintance of petitioner Serman since 1956 (R.

ARGUMENT

1. Petitioners argue that the matters in Mrs. Socie's statement suggest that John Paladinich, rather than petitioners, was the source of the counterfeit currency, and that the matters "go to the heart of the charges on which these petitioners were convicted" (Pet. 12). Even if the allegations are accepted, they most logically suggest only that in addition to discussing the passing of counterfeit notes with petitioner Serman in the fall of 1962, Paladinich found a temporary storage place for what might have been some of the printing paraphernalia, and that he gave to Socie, as well as to his brother, some of the notes obtained from petitioners on the night of January 3, 1963. At most, the allegations are simply impeaching as to Paladinich by suggesting that he was deeply involved in counterfeiting activities. Far from being of a nature that would probably produce an acquittal in case of retrial, these matters quite clearly are peripheral and immaterial to the offenses charged to petitioners. The evidence that petitioners conspired with Paladinich to pass counterfeit notes, supplied in part by the surveillance by the Secret Service agents which included overhearing a portion of Serman's conversation with the Paladinich brothers on January 25, 1967, is entirely unaffected. Under such circumstances, the district court, which had observed the presentation and the development of the evidence at the trial, did not abuse its discretion by denying the motions (See *Mesarosh* v. *United States*, 352 U.S. 1, 9; *United States* v. *Curry*, 358 F. 2d 904 (C.A. 2), certiorari denied, 385 U.S. 873;

Beyda v. *United States*, 324 F. 2d 526 (C.A. 9); *Ferina* v. *United States*, 302 F. 2d 95 (C.A. 8), certiorari denied, *sub nom. Cardarella* v. *United States*, 371 U.S. 819; *United States* v. *Lawrenson*, 298 F. 2d 880 (C.A. 4), certiorari denied, 370 U.S. 913) and it could properly do so upon consideration of the movants' contentions and affidavits alone (see *United States* v. *Johnson*, 327 U.S. 106; *United States* v. *Troche*, 213 F. 2d 401, 403 (C.A. 2); *United States* v. *On Lee*, 201 F. 2d 722 (C.A. 2) certiorari denied, 345 U.S. 936; *United States* v. *Hoffa*, 247 F. Supp. 692, 698 (E.D. Tenn.) affirmed, 376 F. 2d 1020 (C.A. 6), certiorari pending, No. 432, this Term). The related argument concerning Socie's purported confession to a Youngstown police officer—a confession which was not alleged to have been known to the federal authorities—similarly has no bearing on petitioners' convictions.

Pointing out that the Paladinich brothers ultimately received suspended sentences and were placed on probation for their part in the offenses, petitioners asserted in their motions that John and Joseph Paladinich had lied at trial when they denied that they had been promised consideration for their testimony (R. 30a, 33a). At the sentencing proceedings the government attorney called the court's attention to the cooperation of the Paladinich brothers in the case and advised the court that the Secret Service had recommended probation (R. 56a). There is nothing to indicate, however, that the government had offered to make such a recommendation as an inducement for the brothers' testimony at trial. In view of the spe-

cific denials of any such inducement (Tr. 86–88, 204) the district judge, who had observed the brothers in making the denials at trial, was justified in rejecting, without a hearing, this ground for a new trial.

2. In the court below, petitioners filed a motion for an order directing that the Department of the Treasury, the United States Secret Service, and the Department of Justice examine their files and report whether petitioners had been the subjects of official wiretapping or electronic eavesdropping (Pet. App. 33–35). In response to the motion, an affidavit was filed by an Assistant United States Attorney stating that he had inquired of the United States Secret Service and had been informed that no such wiretapping or eavesdropping was employed in the government's investigation of petitioners' counterfeiting activities (Pet. App. 42–44). The motion was denied by the court of appeals (Pet. App. 32). Petitioners then filed a further pleading on the subject (Pet. App. 36–42), alleging that in April 1962 two F.B.I. agents had been found on the roof of the building in which petitioner Serman's office was located, and that later that same day a wire was found which connected Serman's telephone line to F.B.I. headquarters (Pet. App. 39). Seven days later the government filed a memorandum in opposition, noting that, while there had not been time to check petitioners' specific allegations with the F.B.I., the F.B.I. had not been involved in the investigation of the charged offenses (Pet. App. 45–47). Appended were affidavits of the Secret Service Agent in charge of the investigation of petitioners since February 4, 1963, and of a second Secret Service

Agent "familiar with all phases and aspects of said investigation" in 1962 and 1963. They swore that the investigation was under the exclusive control of the Secret Service, that no wiretapping or electronic eavesdropping was employed in any phase of the investigation, and that no information or evidence in the investigation was received from the F.B.I. or any other federal agency (Pet. App. 45–50). The court of appeals, noting that it had considered all of the documents filed, denied rehearing (Pet. App. 33).

Since the government affidavits demonstrated that there had been no electronic surveillance of petitioners in the investigation of the offenses for which petitioners were convicted, the court's disposition of the matter was entirely proper. Moreover, pursuant to the policy set forth in our Supplemental Memorandum in *Schipani* v. *United States*, No. 504, October Term, 1966, 385 U.S. 372, we have conducted an additional review to determine whether any electronic eavesdropping or wiretapping affected petitioners' convictions. We have found no indication that petitioner Serman's telephone had been tapped by the F.B.I. We have further found that there is nothing in the case warranting notification to this Court or warranting any other proceedings in this regard.

CONCLUSION

For the foregoing reasons, it is respectfully submitted that the petition for a writ of certiorari should be denied.

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SEPTEMBER 1967.

U.S. GOVERNMENT PRINTING OFFICE: 1967